

December 10, 2019

Mr. Daniel Staley
DRS & Associates, Inc.
52 Winters Street
Westminster, MD 21157

RE: Dill Property at 931 Miller Road
Forest Conservation Variance
Tracking # 03-19-3109

Dear Mr. Staley:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on November 18, 2019. The requested variance would allow the removal of two specimen trees in order to construct a single family dwelling and associated well and septic system. Under full compliance with the Forest Conservation Law, the limit of disturbance (LOD) for constructing the house would have to be shifted further into forest that is high priority for retention in order to avoid the critical root zone of both specimen trees.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The applicant is seeking to develop a home site on a proposed two-lot minor subdivision. However, full compliance with the law would not deprive the petitioner of all beneficial use of the property, as one house and its ancillary uses as well as a cell tower site have already been developed on the 17.8-acre property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that their plight is due to unique circumstances and not the general conditions of the neighborhood. The need for the variance arises from the petitioner's request for relief from the location of the specimen trees relative to the project's LOD and approved septic reserve area

rather than conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The size of the proposed house and its lot are consistent with the character of the rural neighborhood. Therefore, we find that granting the requested variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen trees to be removed are not within a Forest Buffer or near any stream or wetland. Moreover, they are near the edge of existing forest, so forest clearing would be minimized in developing this lot. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions that would necessitate this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The requested variance is generally consistent with the Forest Conservation Law given that approximately 10 of 15 acres of forest would be protected in FCE. However, it appears that the proposed house could be slightly shifted to the southeast to avoid the critical root zone of one of the specimen trees without affecting either the septic design or forest retained. Consequently, we find that this criterion can be met with Condition 1 below.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby granted in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. The LOD for constructing the house and parking pad must be shifted at least 30 feet to the southeast away from Specimen Tree #1 so that the LOD is outside of the critical root zone of that tree.
2. The following note must be on all plans for this project:

A variance was granted by Baltimore County Environmental Protection and Sustainability to the Forest Conservation Law on December 10, 2019 to remove one specimen tree. Conditions were placed on this approval to ensure the goals of the Forest Conservation Law are met including protecting the remaining specimen trees onsite.

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3. A final Forest Conservation Plan revised to reflect the conditions of this variance must be approved by EPS and its mylar subsequently submitted to EPS for signature prior to approval of any minor subdivision plan.

There is no mitigation required for removal of the one specimen tree, as it is within forest that was accounted for on the project's forest conservation plan. It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submission of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

David V. Lykens
Director

DVL/ges

- c. Christopher and Sarah Warwick, Property Owners
Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owners' Signatures

Date

Printed Names